

1 3. Plaintiff has Article III standing to bring this action, as it seeks to redress
2 conduct by Defendant that caused Plaintiff to suffer intangible harms, which Congress
3 has made legally cognizable in passing the FDCPA. *See Spokeo, Inc. v. Robins*, 136 S.
4 Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016) (Congress is “well
5 positioned to identify intangible harms that meet minimum Article III requirements,” and
6 thus “may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries
7 that were previously inadequate in law.’” (quoting *Lujan v. Defs of Wildlife*, 504 U.S.
8 555, 578 (1992)); *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL
9 3671467, at *3 (N.D. Ill. July 11, 2016) (“Without the protections of the FDCPA,
10 Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are
11 inadequate to protect consumers.’” (quoting 15 U.S.C. § 1692(b)).
12

13 4. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
14 the acts and transactions giving rise to Plaintiff’s action occurred in this district, where
15 Plaintiff resides in this district, and where Defendant transacts business in this district.
16

17 **THE FAIR DEBT COLLECTION PRACTICES ACT**

18 5. Congress enacted the FDCPA in order to eliminate “abusive debt collection
19 practices by debt collectors [and] to insure that those debt collectors who refrain from
20 using abusive debt collection practices are not competitively disadvantaged.” *Clark v.*
21 *Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1179-80 (9th Cir. 2006) (citing
22 15 U.S.C. § 1692(e)).
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1 12. Defendant is an entity who at all relevant times was engaged, by use of the
2 mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as
3 defined by 15 U.S.C. § 1692a(5).
4

5 13. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).
6

7 **FACTUAL ALLEGATIONS**

8 14. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be
9 owed or due a creditor other than Defendant.

10 15. Plaintiff’s alleged obligation arises from a transaction in which the money,
11 property, insurance, or services that are the subject of the transaction were incurred
12 primarily for personal, family, or household purposes—namely, personal medical
13 services (the “Debt”).
14

15 16. Defendant uses instrumentalities of interstate commerce or the mails in a
16 business the principal purpose of which is the collection of any debts.
17

18 17. Defendant regularly collects or attempts to collect, directly or indirectly,
19 debts owed or due, or asserted to be owed or due, another.
20

21 18. In connection with the collection of the Debt, Defendant sent Plaintiff
22 written correspondence dated June 3, 2018.

23 19. A true and correct copy of the June 3, 2018 letter and envelope is attached
24 as Exhibit A.
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26 20. Through the envelope’s window, Defendant includes its name and return
27 address. Exhibit A.
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1 21. Defendant's name, which appears through the window, is disclosed as
2 "E&A Medical Billing & Insurance Services." Exhibit A.

3
4 22. Using the name "E&A Medical Billing & Insurance Services" indicates that
5 Defendant is in the debt collection business.

6 23. However, below its name it states: "**DELINQUENT CLAIMS DEPT.**"
7 Exhibit A (emphasis in original).

8
9 24. The June 3, 2018 letter was Defendant's initial communication with respect
10 to the Debt.

11 25. The June 3, 2018 letter purports to provide the notices required by 15
12 U.S.C. § 1692g(a)(3)-(5). Exhibit A.

13
14 26. Despite the top of the letter referring to "E&A Medical Billing & Insurance
15 Services," the body of the letter states the account has been referred to RSKM, LLC.
16 Exhibit A.

17
18 27. Further, the letter notes that "RSKM" will assume the validity of the Debt if
19 not disputed, "RSKM" will obtain and mail verification if it receives a written dispute,
20 and "RSKM" will provide the name and address of the original creditor if requested in
21 writing. Exhibit A.

22
23 28. Nowhere in the June 3, 2018 letter does it explain the relationship between
24 "E&A Medical Billing & Insurance Services" and "RSKM, LLC." Exhibit A.

25
26 29. Upon reading the letter, the least sophisticated consumer would be misled
27 into believing "E&A Medical Billing & Insurance Services" and "RSKM, LLC" are two
28 separate entities.

1 30. The letter does not provide any contact information for RSKM.

2 31. Upon receiving the letter, the least sophisticated consumer would be unsure
3 how to dispute the Debt with RSKM.
4

5 32. By sending the letter on “E&A Medical Billing & Insurance Services”
6 letterhead and referring to “RSKM, LLC” within the purported validation notices,
7 Defendant did not meaningfully convey the required notices.
8

9 **CLASS ACTION ALLEGATIONS**

10 33. Plaintiff repeats and re-alleges all factual allegations above.

11 34. Upon information and belief, Defendant’s June 3, 2018 initial
12 correspondence is based on a form or template where the letter uses “E&A Medical
13 Billing & Insurance Services” letterhead and refers to “RSKM, LLC” throughout the
14 body (the “Template”).
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16

17 35. Defendant has used the Template to send collection letters to over 40
18 individuals in the State of Arizona within the year prior to the filing of the original
19 complaint in this matter.
20

21 36. Upon information and belief, Defendant’s June 3, 2018 letter is part of a
22 general letterhead template where the return address uses the name “E&A Medical
23 Billing & Insurance Services” and states “**DELINQUENT CLAIMS DEPT**”
24 (“Letterhead Template”) designed to be used with a window envelope (“Envelope”).
25

26 37. Upon information and belief, Defendant used the Letterhead Template and
27 Envelope to send collection letters to over 40 individuals in the State of Arizona within
28 the year prior to the filing of the original complaint in this matter.

1 38. Plaintiff brings this action on behalf of himself and all others similarly
2 situated. Specifically, Plaintiff seeks to represent the following classes of individuals:

3
4 **Template Class**

5 All persons with an Arizona address, to whom Defendant sent a letter based
6 upon the Template, within one year before the date of this complaint.

7 **Letterhead Template and Envelope Class**

8 All persons with an Arizona address, to whom Defendant sent a letter using
9 the Letterhead Template and Envelope, within one year before the date of
10 this complaint.

11 39. The classes are averred to be so numerous that joinder of members is
12 impracticable.

13 40. The exact number of class members is unknown to Plaintiff at this time and
14 can be ascertained only through appropriate discovery.

15 41. The class is ascertainable in that the names and addresses of all class
16 members can be identified in business records maintained by Defendant.

17 42. There exists a well-defined community of interest in the questions of law
18 and fact involved that affect the parties to be represented. These common questions of
19 law and fact predominate over questions that may affect individual class members. Such
20 issues include, but are not limited to: (a) the existence of Defendant's identical conduct
21 particular to the matters at issue; (b) Defendant's violations of the FDCPA; (c) the
22 availability of statutory penalties; and (d) attorneys' fees and costs.

23 43. Plaintiff's claims are typical of those of the classes she seeks to represent.

24 44. The claims of Plaintiff and of the classes originate from the same conduct,
25 practice, and procedure on the part of Defendant. Thus, if brought and prosecuted
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1 individually, the claims of the members of the classes would require proof of the same
2 material and substantive facts.

3
4 45. Plaintiff possesses the same interests and has suffered the same injuries as
5 each class member. Plaintiff asserts identical claims and seeks identical relief on behalf
6 of the unnamed class members.

7
8 46. Plaintiff will fairly and adequately protect the interests of the class and has
9 no interests adverse to or which directly and irrevocably conflict with the interests of
10 other members of the class.

11
12 47. Plaintiff is willing and prepared to serve this Court and the proposed
13 classes.

14
15 48. The interests of Plaintiff are co-extensive with and not antagonistic to those
16 of the absent class members.

17
18 49. Plaintiff has retained the services of counsel who are experienced in
19 consumer protection claims, as well as complex class action litigation, will adequately
20 prosecute this action, and will assert, protect and otherwise represent Plaintiff and all
21 absent class members.

22
23 50. Class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) and
24 23(b)(1)(B). The prosecution of separate actions by individual members of the classes
25 would, as a practical matter, be dispositive of the interests of other members of the
26 classes who are not parties to the action or could substantially impair or impede their
27 ability to protect their interests.
28

1 51. The prosecution of separate actions by individual members of the classes
2 would create a risk of inconsistent or varying adjudications with respect to individual
3 class members, which would establish incompatible standards of conduct for the parties
4 opposing the classes. Such incompatible standards of conduct and varying adjudications,
5 on what would necessarily be the same essential facts, proof and legal theories, would
6 also create and allow the existence of inconsistent and incompatible rights within the
7 classes.
8

9
10 52. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) in that
11 Defendant has acted or refused to act on grounds generally applicable to the classes,
12 making final declaratory or injunctive relief appropriate.
13

14 53. Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) in that the
15 questions of law and fact that are common to members of the classes predominate over
16 any questions affecting only individual members.
17

18 54. Moreover, a class action is superior to other methods for the fair and
19 efficient adjudication of the controversies raised in this Complaint in that: (a) individual
20 claims by the class members will be impracticable as the costs of pursuit would far
21 exceed what any one plaintiff or class member has at stake; (b) as a result, very little
22 litigation has commenced over the controversies alleged in this Complaint and individual
23 members are unlikely to have an interest in prosecuting and controlling separate
24 individual actions; and (c) the concentration of litigation of these claims in one forum
25 will achieve efficiency and promote judicial economy.
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COUNT I
VIOLATION OF 15 U.S.C. § 1692f(8)

55. Plaintiff repeats and re-alleges each factual allegation contained above.

56. “§ 1692f(8)’s prohibition on language and symbols applies to markings that are visible through a transparent window of an envelope.” *Douglass v. Convergent Outsourcing*, 765 F.3d 299, 302 (3d Cir. 2014).

57. “The text of § 1692f(8) is unequivocal. ‘[A]ny language or symbol,’ except the debt collector’s address and, in some cases, business name, may not be included ‘on any envelope.’” *Id.* at 303 (citing 15 U.S.C. § 1692f(8)).

58. Defendant violated 15 U.S.C. § 1692f(8) by using language or a symbol, other than Defendant’s address, on an envelope sent to Plaintiff that expresses something other than Defendant’s business name.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692f(8) with respect to Plaintiff and the class she seeks to represent;
- c) Awarding Plaintiff and the class she seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);

- 1 e) Awarding all other class members such amount as the Court may allow,
 2 without regard to a minimum individual recovery, not to exceed the lesser
 3 of \$500,000 or one percent of the net worth of the debt collector, pursuant
 4 to 15 U.S.C. § 1692k(a)(2)(B)(ii);
 5
 6 f) Awarding Plaintiff and the class she seeks to represent, reasonable
 7 attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. §
 8 1692k(a)(3) and Rule 23;
 9
 10 g) Awarding Plaintiff and the class she seeks to represent, pre-judgment and
 11 post-judgment interest as permissible by law; and
 12
 13 h) Awarding such other and further relief as the Court may deem proper.

14 **COUNT II**
 15 **VIOLATION OF 15 U.S.C. § 1692e**

16 59. Plaintiff repeats and re-alleges each factual allegation contained above.

17 60. The FDCPA creates a broad, flexible prohibition against the use of
 18 misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. §
 19 1692e; *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir.
 20 2002) (citing legislative history reference to the FDCPA's general prohibitions which
 21 "will enable the courts, where appropriate, to proscribe other improper conduct which is
 22 not specifically addressed").
 23
 24

25 61. "[I]t is well established that '[a] debt collection letter is deceptive where it
 26 can be reasonably read to have two or more different meanings, one of which is
 27
 28

inaccurate.’” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1062 (9th Cir. 2011) (quoting *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 455 (3d Cir. 2006)).

62. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of the Debt, by sending an initial communication that would mislead the least sophisticated consumer into believing “E&A Medical Billing & Insurance Services” and “RSKM, LLC” are two separate entities and not conveying the contact information for RSKM so that the consumer can submit a timely dispute.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692e with respect to Plaintiff and the class she seeks to represent;
- c) Awarding Plaintiff and the class she seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);

f) Awarding Plaintiff and the class she seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;

g) Awarding Plaintiff and the class she seeks to represent, pre-judgment and post-judgment interest as permissible by law; and

h) Awarding such other and further relief as the Court may deem proper.

COUNT III VIOLATION OF 15 U.S.C. § 1692g(a)

63. Plaintiff repeats and re-alleges each factual allegation contained above.

64. A key provision of the FDCPA is § 1692g, which requires a debt collector to send, within five days of its initial communication with a consumer, a written notice which provides information regarding the debt and informs the consumer of his or her right to dispute the validity of the debt, and/or request the name and address of the original creditor, within 30 days of receipt of the notice. *See* 15 U.S.C. § 1692g(a).

65. Congress adopted "the debt validation provisions of section 1692g" to guarantee that consumers would receive "adequate notice" of their rights under the FDCPA. *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000) (citing *Miller v. Payco-General Am. Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991)).

66. This validation requirement is a "significant feature" of the law that aimed to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." *See Hernandez v.*

1 *Williams, Zinman & Parham PC*, 829 F.3d 1068, 1070 (9th Cir. 2016) (citing S. Rep. No.
2 95-382, at 4 (1977)).

3
4 67. “To satisfy section 1692g’s requirements, the notice Congress required
5 must be conveyed effectively to the debtor.” *Terran v. Kaplan*, 109 F.3d 1428, 1432 (9th
6 Cir. 1997) (quoting *Swanson v. Southern Oregon Credit Serv., Inc.*, 869 F.2d 1222, 1227
7 (9th Cir. 1988)) (internal citations omitted); *see also Janetos v. Fulton Friedman &*
8 *Gullace, LLP*, 825 F.3d 317, 321 (7th Cir. 2016) (“When § 1692g(a) requires that a
9 communication include certain information, compliance demands more than simply
10 including that information in some unintelligible form.”).

11
12
13 68. “The statute is not satisfied merely by inclusion of the required debt
14 validation notice; the notice Congress required must be conveyed effectively to the
15 debtor. It must be large enough to be easily read and sufficiently prominent to be
16 noticed—even by the least sophisticated debtor.” *Gostony v. Diem Corp.*, 320 F. Supp.
17 2d 932, 938 (D. Ariz. 2003); (citing *Ost v. Collection Bureau, Inc.*, 493 F. Supp. 701, 703
18 (D.N.D. 1980) (“communication must not be designed to ‘evade the spirit of the notice
19 statute, and mislead the debtor into disregarding the notice’”).
20
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22 69. Defendant violated 15 U.S.C. § 1692g(a) by failing to meaningfully convey
23 the notices required by 15 U.S.C. § 1692g(a), either in the initial communication with
24 Plaintiff, or in writing within 5 days thereafter.
25

26 WHEREFORE, Plaintiff prays for relief and judgment, as follows:
27
28

- a) Determining that this action is a proper class action, certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure, and designating this Complaint the operable complaint for class purposes;
- b) Adjudging that Defendant violated 15 U.S.C. § 1692g(a) with respect to Plaintiff and the class she seeks to represent;
- c) Awarding Plaintiff and the class she seeks to represent actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff such additional damages as the Court may allow in the amount of \$1,000, pursuant to § 1692k(a)(2)(B)(i);
- e) Awarding all other class members such amount as the Court may allow, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or one percent of the net worth of the debt collector, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(ii);
- f) Awarding Plaintiff and the class she seeks to represent, reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3) and Rule 23;
- g) Awarding Plaintiff and the class she seeks to represent, pre-judgment and post-judgment interest as permissible by law; and
- h) Awarding such other and further relief as the Court may deem proper.

TRIAL BY JURY

70. Plaintiff is entitled to and hereby demands a trial by jury.

Dated: July 24, 2018

Respectfully submitted,

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